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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH (CENTRAL DIVISION)

RISE FESTIVAL, LLC,

Plaintiff,

vs.

LIGHT THE SKY LLC,

Defendant.

COMPLAINT

Civil Action No. 2:17-cv-00935

Judge Dale A. Kimball

Plaintiff Rise Festival, LLC (“Rise Festival”) brings this action against Defendant Light the Sky LLC (“Light the Sky”) for damages and other relief under the laws of the United States and under the laws of the State of Utah.

PRELIMINARY STATEMENT

This is an action alleging false advertising arising from the Defendant's marketing, advertising, promotion, offering for sale, and/or sale of Light the Sky's lantern- oriented events

(“LTS Lantern Events”).

1. Plaintiff seeks injunctive and monetary relief.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction of this civil action under of 28 U.S.C. Section 1331, 28 U.S.C. Section 1338(a), Section 1125(a) and/or other federal law, and supplemental jurisdiction under 28 U.S.C. Section 1367(a).

3. This Court has supplemental jurisdiction over Claim Two under 28 U.S.C. Section 1367(a) because it arises from the common nucleus of operative facts complained of in Claim 1.

4. Venue is proper in this judicial district under 28 U.S.C. Section 1391 because Defendant resides in this judicial district and/or a substantial part of the events or omissions giving rise to the claim occurred.

5. The Court has personal jurisdiction over the Defendant because the Defendant does business in this judicial district, is registered to do business in this judicial district, falsely advertises in this judicial district, and/or knew that its acts and omissions as alleged herein would have a substantial impact on parties in this judicial district.

PARTIES

6. Rise Festival is a limited liability company duly organized and existing under the laws of the State of Utah. Rise Festival maintains its principal place of business at 150 South State Street, Salt Lake City, Utah 84111.

7. Light the Sky is a Utah entity formed under the laws of Utah and does business in Salt Lake City, Utah.

FACTS

8. Rise Festival organizes highly professional and well-attended lantern lighting festivals around the world.

9. Light the Sky is a recently formed company which purports to organize “lantern festival that celebrates the good within all of us. It's a reminder that together we're part of something greater than ourselves. Some come to commemorate loved ones who have passed. Others come to celebrate a positive change or to commit themselves to achieving a goal.”

10. Videos advertising the LTS Lantern Events are located at the following URL's: <https://www.lightthesky.com/> and <https://www.facebook.com/LightTheSky/>. While the video purports to be of an LTS Lantern Event, the video includes footage actually taken at a Rise Festival event.

11. Furthermore, the videos shown advertising LTS Lantern Events communicate that the festival in the video was a festival managed and ran by Light the Sky, which is not accurate.

12. Also, the advertising communicates to consumers that the LTS Lantern Events will be similar to a Rise Festival event.

13. Furthermore, Light the Sky has implemented advertising showing, for instance videos advertising a lantern festival where the number of participating lanterns exceeds several hundred and the number of tiki torches exceeds several hundred, when in fact Light the Sky has not managed a lantern festival with that number of participating lanterns or torches.

14. Additionally, advertising presented by Light the Sky regarding an event in Grand Rapids represented that food trucks would be at the event. However, no food trucks were present at the event.

15. On July 5, 2017, and again on July 27, 2017, counsel for Rise Festival sent a letter to Light the Sky informing Light the Sky that its advertising for the LTS Lantern Events was false or misleading. Light the Sky has not yet taken down the false or misleading advertising, and has not promulgated a notice correcting its advertisement.

FIRST CLAIM
(False Advertising in Violation of
Section 43(a)(1)(A) of the Lanham Act)

16. Rise Festival realleges and incorporates by reference paragraphs 1 through 16 inclusive, as if fully set forth herein.

17. At least Defendants' statements set forth above regarding the LTS Lantern Events, which statements have been made and disseminated in interstate commerce and in this District, are false and/or misleading descriptions or representations of fact which misrepresent the nature, characteristics and qualities of the LTS Lantern Events and as such constitute false advertising under 15 U.S.C. § 1125(a).

18. These statements actually deceive, or have a tendency to deceive, a substantial segment of Light the Sky's customers and potential customers. This deception is material in that concerns and inherent quality or characteristic of the LTS Lantern Events and is likely to influence the purchasing decisions of Light the Sky's customers.

19. Light the Sky's false and/or misleading statements have been made willfully and Light the Sky will continue its false advertising unless enjoined by this Court. Rise Festival has been and will continue to be damaged by Light the Sky's false advertising, including immediate and irreparable injury to Rise Festival, such as injury to Rise Festival's business, reputation and goodwill, for which there is no adequate remedy at law. Rise Festival is therefore entitled to an injunction under 15 U.S.C. § 1116 restraining Light the Sky from engaging in future acts of false advertising and ordering removal of all of Light the Sky's false advertisements.

SECOND CLAIM
(Unfair Advertising in Violation of
Utah Code § 13-11a-1 et seq.)

20. Rise Festival realleges and incorporates by reference paragraphs 1 through 20 inclusive, as if fully set forth herein.

21. Light the Sky has made, in connection with its business, statements in advertising that represent that the LTS Lantern Events has characteristics, uses, benefits, and/or qualities that it does not have or has engaged in other conduct that similarly creates a likelihood of confusion and/or misunderstanding.

22. Light the Sky's acts constitute an intentional business act or practice that is unlawful, unfair, or fraudulent.

23. Rise Festival has been and will continue to be damaged by Light the Sky's false advertising.

24. Rise Festival has made a demand on Light the Sky to promulgate corrective advertising but Light the Sky has not done so.

25. Rise Festival is entitled to an injunction, and the recovery of damages pursuant to 13-11a-4.

PRAYER FOR RELIEF

WHEREFORE, Rise Festival demands judgment in its favor and against Light the Sky, as follows:

A. For a preliminary and permanent injunction, under 15 U.S.C. § 1116 and/or UCA 13-11a-4, restraining and enjoining Light the Sky, its agents, servants, employees, officers, and those persons in act of concert or participation with Defendants, from any false advertising with respect to its LTS Lantern Events;

B. For an award of costs, profits and damages for Light the Sky's false advertising with respect to LTS Lantern Events, and statutory damages;

C. For an award of Rise Festival's costs and attorney fees pursuant to Utah Code §13-11a-4 or other applicable law;

D. For an order requiring Light the Sky to promulgate corrective advertising by the same media and with the same distribution and frequency and the advertising complained of herein; and

E. For such other and further relief as the Court in its discretion deems appropriate.

DATED this 16th day of August 2017.

PARR BROWN GEE & LOVELESS, PC

/s/ Chad S. Pehrson
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